

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BILL MARKER

Claimant

VS.

CONTINENTAL BAKING COMPANY

Respondent

Self-Insured

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Docket No. 199,375

ORDER

This appeal is filed by the respondent requesting Appeals Board review of a Preliminary Hearing Order entered by Administrative Law Judge John D. Clark, dated May 23, 1995, that granted claimant's request for medical treatment.

ISSUES

The respondent requests Appeals Board review of the following issues:

- (1) Whether timely notice was given; and,
- (2) What is the nature and extent of claimant's disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, the Appeals Board finds as follows:

The issue of timely notice is a jurisdictional issue that subjects a preliminary hearing order to Appeals Board review. See K.S.A. 44-534a(a)(2).

(1) On the date of the Preliminary Hearing on May 23, 1995, the claimant was still working for the respondent and, in fact, had not missed any work because of his alleged work-related injuries. In his Application for Hearing that was filed March 13, 1995, claimant alleged dates of accident of February 21, 1995 and each and every work day thereafter including a specific incident that occurred on March 4, 1995.

Claimant testified that when his supervisor inquired of him why he was limping, he told his supervisor that he injured his right knee when he slipped on the ice on March 4, 1995. Claimant is additionally requesting medical treatment for alleged work-related injuries to his left knee and low back. Claimant admitted that he did not report the left knee and low back injuries to the respondent. However, since the claimant has remained at work for the respondent and he has alleged a series of accidents occurring each and every day, the Appeals Board finds that the claimant's Application for Hearing is timely notice of a work-related accident as required by K.S.A. 44-520.

(2) Respondent also raises the issue of nature and extent of claimant's disability. The Appeals Board finds, from a review of the preliminary hearing transcript, that the respondent, by raising this issue, is questioning the Administrative Law Judge's authority to order medical treatment for claimant's low back and left knee problems. Respondent agrees that the claimant's right knee should be examined to determine whether it was injured while working for the respondent or is a continuation of an injury that occurred at the Coca-Cola Bottling Company, claimant's prior employer. The respondent did not file a brief supporting its position in this case. Therefore, the Appeals Board must assume that the respondent would argue that the preliminary hearing record does not support a need for medical treatment to claimant's left knee and back. With respect to this issue, the Appeals Board finds that K.S.A. 44-534a(a)(2) gives the Administrative Law Judge authority to grant or deny the request for medical compensation in a preliminary hearing order pending a full hearing on the claim. Additionally, the question in regard to the nature and extent of claimant's disability is not an issue listed in K.S.A. 44-534a(a)(2) over which the Appeals Board has authority to review.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated May 23, 1995, granting claimant's request for medical treatment, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Terry J. Torline, Wichita, KS
Scott J. Mann, Hutchinson, KS
John D. Clark, Administrative Law Judge
David A. Shufelt, Acting Director